

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-KC-500
)	
VoiceStream PCS I License L.L.C.)	NAL/Acct. No.200232560017
Owner of Antenna Structure #1226514 near Davis)	
City, Iowa)	FRN 0001-5651-34
Bellevue, Washington)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: July 24, 2002

By the Enforcement Bureau, Kansas City Office:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find VoiceStream PCS I License L.L.C. (“VoiceStream”), owner of antenna structure #1226514, apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 17.51(b) of the Commission's Rules (“Rules”).¹ Specifically, we find VoiceStream PCS I License L.L.C. apparently liable for failure to continuously exhibit all high intensity and medium intensity obstruction lighting.

II. BACKGROUND

2. On June 24, 2002, the antenna structure associated with FCC antenna structure registration (“ASR”) #1226514 and located near Davis City, Iowa, was inspected by an agent of the Commission's Kansas City Field Office (“Kansas City Office”). At the time of inspection, 11:50 a.m., the unpainted structure had no medium or high intensity obstruction lighting in operation.

3. On June 27, 2002, an agent of the Kansas City Office determined from the Commission ASR database that antenna structure #1226514 was registered to VoiceStream and that the registration included requirements to maintain a dual lighting system that included high and medium intensity obstruction lighting during daylight operation. The agent telephoned the listed contact person for VoiceStream, Dan Menser, who stated he would check on the outage.

4. On July 2, 2002, VoiceStream's contact person, Dan Menser, was interviewed by an agent of the Kansas City Office via telephone. According to Mr. Menser, the photocell had become damaged which caused the high and medium intensity obstruction lighting to become inoperable and the red lights and beacon to become operational during daylight hours. Mr. Menser stated that no alarms occurred on the remote light monitoring system as the system monitors the red lights and beacons only and those lights remained in operation. The photocell was repaired on June 29, 2002. Mr. Menser stated that at no

¹ 47 C.F.R. § 17.51(b).

point was the Federal Aviation Administration (“FAA”) notified of the outage, again since the red lights and beacon remained in operation. Mr. Menser followed up the interview with an email that included a copy of VoiceStream’s records pertaining to light observations and outages. According to this log, visual observation of the lighting on the structure, and the last log entry, occurred on June 18, 2002 at 6:40 p.m. There were no entries documenting the outage or the repairs made.

III. DISCUSSION

5. Section 17.51(b) of the Rules requires that all high intensity and medium intensity obstruction lighting be exhibited continuously unless otherwise specified. VoiceStream’s antenna structure #1226514 is required to exhibit high and medium intensity obstruction lighting during daylight hours. At the time of inspection on June 24, 2002, no high or medium intensity obstruction lighting was observed on VoiceStream’s antenna structure #1226514. According to VoiceStream, the lighting was not exhibited until June 29, 2002. VoiceStream did not notify the FAA of the light outage.²

6. Based on the evidence before us, we find VoiceStream willfully³ and repeatedly⁴ violated Section 17.51(b) of the Rules by failing to continuously exhibit all high intensity and medium intensity obstruction lighting.

7. Pursuant to Section 1.80(b)(4) of the Rules,⁵ the base forfeiture amount for failure to comply with prescribed antenna structure lighting is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁶ Considering the entire record and applying the factors listed above, this case warrants a forfeiture of \$10,000.

² The owner of any registered antenna structure must report immediately to the nearest flight service station of the FAA any observed or otherwise known extinguishment or improper functioning of any flashing obstruction light not corrected within 30 minutes. *See* 47 C.F.R. § 17.48.

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁴ The term “repeated,” when used with reference to the commission or omission of any act, “means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

⁵ 47 C.F.R. § 1.80(b)(4).

⁶ 47 U.S.C. § 503(b)(2)(D).

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁷ and Sections 0.111, 0.311 and 1.80 of the Rules,⁸ VoiceStream PCS I License L.L.C. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 17.51(b) of the Rules by failing to continuously exhibit all high intensity and medium intensity obstruction lighting.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *NAL*, VoiceStream PCS I License L.L.C. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the *NAL*/Acct. No. and FRN referenced above. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

11. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE *NAL*/Acct. No. referenced above.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

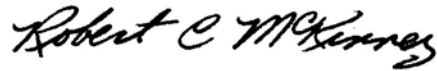
⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁹ See 47 C.F.R. § 1.1914.

13. IT IS FURTHER ORDERED THAT a copy of this *NAL* shall be sent by regular mail and Certified Mail Return Receipt Requested to VoiceStream PCS I License L.L.C., 12920 SE 38th Street, Bellevue, Washington 98006.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, reading "Robert C. McKinney". The signature is written in a cursive, flowing style.

Robert C. McKinney
Kansas City Office, Enforcement Bureau